Exxonmobil Malaysia Sdn Bhd v Pentadbir Tanah Daerah Petaling

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B-01–205–05 OF 2013
ABDUL WAHAB PATAIL, LINTON ALBERT AND ROHANA YUSUF JJCA
3 JUNE 2015

Civil Procedure — Appeal — Appeal against judgment of High Court — Whether appeal devoid of merit — Whether High Court fully appreciated and considered appellant's case and arrived at reasoned judgment on sole question of law

The appellant was the lessee of a piece of land which was compulsorily acquired by the government. The High Court had dismissed the appellant's appeal against the respondent's award of compensation for the acquisition. The only issue before the High Court was whether the appellant's loss of income from sale of petrol and diesel at its petrol station on the land was claimable under the Land Acquisition Act 1960 ('the Act'). The High Court held such loss of income was not claimable, hence the instant appeal.

Held, dismissing the appeal:

(1) There was no merit in the appeal. The High Court had fully appreciated and considered the appellant's case. Not only did the High Court decide that the loss of income was not claimable under the Land Acquisition Act 1960, inter alia, under para 2(d) read with para 2(e) of the First Schedule of the Act, but the grounds of judgment demonstrated the reasoning process by which the court had arrived at the decision. Inter alia, the judgment amply explained that the compensation which was claimable was for reasonable expenses, if any, incidental to the change of residence or place of business of the appellant, but not for loss of income. The issue before the High Court was what was authorised by the Act as compensation, and that issue was dealt with adequately (see paras 5–7, 16 & 18).

[Bahasa Malaysia summary

Perayu adalah pemajak sebidang tanah yang mana diperoleh secara wajib oleh kerajaan. Mahkamah Tinggi telah menolak rayuan perayu terhadap award pampasan responden untuk pemerolehan tersebut. Satu-satunya isu di hadapan Mahkamah Tinggi adalah sama ada kehilangan pendapatan daripada jualan petrol dan diesel di stesen minyaknya atas tanah yang boleh dituntut di bawah Akta Pemerolehan Tanah 1960. Mahkamah Tinggi memutuskan

kehilangan pendapatan sedemikian adalah tidak boleh dituntut, maka rayuan ini.

Diputuskan, menolak rayuan:

(1) Tidak terdapat merit dalam rayuan ini. Mahkamah Tinggi telah menghargai dan mempertimbangkan secara penuh kes perayu. Bukan sahaja Mahkamah Tinggi memutuskan bahawa kehilangan pendapatan tidak boleh dituntut di bawah Akta tersebut, antara lain, di bawah perenggan 2(d) dibaca bersama perenggan 2(e) Jadual Pertama Akta tersebut, tetapi alasan penghakiman menunjukkan proses alasan yang mana mahkamah telah mencapai kepada keputusan tersebut. Antara lain, penghakiman dengan memadai menjelaskan bahawa pampasan yang mana boleh dituntut untuk perbelanjaan munasabah, jika ada, berkaitan perubahan pada tempat tinggal atau tempat perniagaan perayu, tetapi bukan untuk kehilangan pendapatan. Isu di hadapan Mahkamah Tinggi adalah apa yang diberi kuasa oleh Akta sebagai pampasan, dan bahawa isu tersebut diuruskan dengan wajar (lihat perenggan 5–7, 16 & 18).]]]

Notes

For cases on appeal against judgment of High Court, see 2(1) *Mallal's Digest* (5th Ed, 2015) paras 902–912.

Legislation referred to

Federal Constitution art 13
Land Acquisition Act 1960 First Schedule, paras 2(d), 2(e)

Appeal from: Land Reference No 15–87–11 of 2011 (High Court, Shah Alam)

Mark L Brooy (Loke Yuen Hong with him) (Raja, Darryl & Loh) for the appellant.
Rafigha Hanim Mohd Rosli (Legal Advisory Office, State of Selangor) for the respondent.

Abdul Wahab Patail JCA:

[1] The applicant, ExxonMobil Malaysia Sdn Bhd ('the appellant') appealed against the decision of the High Court to sustain the award of compensation by the respondent, Pentadbir Tanah Daerah Petaling ('the respondent') and to disallow its application with costs.

[2] The award arose from the acquisition under the Land Acquisition Act 1960 of land bearing the registry description, Lot No PT 17727 (1854) Gm No 225707 Pekan Puchong, Daerah Petaling, Selangor ('the Land') vide

Gazette Notification No WKN Mo 3144 Warta Kerajaan Negeri Selangor dated 10 September 2009. The Land was registered in the name of Pilihan Megah Sdn Bhd and leased to the appellant for a period of 24 years ending 15 November 2019.

[3] The legal and only issue before the High Court was whether loss of income derived from the sale of petrol and diesel at the appellant's petrol station operated on the land can be claimed under the Land Acquisition Act 1960. The High Court held that such loss of income was not claimable under the Land Acquisition Act 1960.

GROUNDS OF APPEAL

[4] The following addresses the grounds of appeal before this court.

GROUND (1)

The learned judge has erred in law in failing to consider and decide that loss of income is claimable under the Land Acquisition Act 1960, inter alia, under para 2(d) *read with* para 2(e) of the First Schedule *of the said Act.*

[5] Paragraphs 5–9, and paras 12–16 of the grounds of judgment demonstrated that the High Court fully appreciated and considered respectively the appellant's case.

[6] Not only did the High Court decide upon whether the loss of income was claimable under the Land Acquisition Act 1960, inter alia, under para 2(d) read with para 2(e) of the First Schedule of the said Act, paras 17–20 demonstrated the reasoning process by which the High Court arrived at its decision.

[7] In the circumstances, we find no merit in the first ground of appeal as stated.

GROUND (2)

The learned judge has erred in law in failing to consider and decide that the word 'property' or 'property' read with the words 'immovable' and 'in any other manner' in para 2(d) of the First Schedule of the Land Acquisition Act 1960 include loss of income.

(a) in this regard, the learned judge has allowed the application for land reference by one Tremendous Growth Sdn Bhd for its loss of income vide Land Reference No 15–82–10 of 2011. Tremendous Growth Sdn Bhd's application was heard together with the appellant's application for land reference that is the subject matter of this appeal, and both the

applications were decided on the same day. Tremendous Growth Sdn Bhd's application for land reference originated from the same piece of land of which Tremendous Growth Sdn Bhd was the petrol station operator while the appellant was the lessee of the said land.

[8] Paragraphs 7, and 12–20 of the grounds of judgment demonstrated that the High Court did consider and decide upon the question.

[9] The application for land reference by one Tremendous Growth Sdn Bhd vide Land Reference No 15–82–10 of 2011 was not referred to in the grounds of judgment. Since it was not raised in the skeletal written submissions for the applicant, or the respondent for that matter, we do not think it a matter for complaint that the High Court did not consider. A court appreciates and considers the case for the parties, and renders its decision with reasoning within an adversarial system in which it is for counsel professing to be qualified and therefore admitted to practice before the court, to submit before the court what needs to be considered by the court.

[10] The land reference for Tremendous Growth Sdn Bhd vide Land Reference No 15–82–10 of 2011 was mentioned by 'In this regard ...' in the grounds of appeal. At paras 36-38 referred to the case. The footnote referred to pp 7–12 of the additional record of appeal. That is part of the notes of proceedings of the High Court on 22 March 2013 when a number of land references cases were heard. Pages 7–12 were the notes of submissions made but shows no decision and reasoning.

[11] Nor was opportunity taken when filing the written submissions in reply of the appellant, to remedy the shortcoming.

[12] There was, therefore, before this court nothing to support the submission the High Court had made a contrary decision.

[13] We dismissed this ground, therefore, as wholly without merit.

GROUND (3)

The learned judge has erred in law in failing to consider and decide that the amendment on para 2(d) of the First Schedule of the Land Acquisition Act 1960 on 1 February 1998 by deleting the word 'or his actual earning' does not remove the compensation for loss of income.

[14] Paragraph 6 of the grounds of judgment demonstrated that the High Court appreciated the submission made, and the same paragraphs above referred to, and in particular para 17, the reasoning behind the decision that

rejected the submission. A court is bound to make an independent, fair and just decision. That the court did not arrive at a conclusion as submitted by counsel does not warrant a complaint that the court did not consider and decide in its favour.

[15] In the circumstances, ground 3 as formulated is without basis.

GROUND (4)

The learned judge has erred in law and/or fact in failing to consider and decide that the appellant's loss of temporary fixed income is a reasonable expense incidental to the change of residence or place of business of the appellant.

[16] Paragraph 18, in our view, amply explained that the compensation which are claimable are the reasonable expenses, if any, incidental to the change of residence or place of business of the applicant, but not loss of income.

GROUND (5)

The learned judge has erred in law in failing to consider that the Federal Constitution does not allow for compulsory (land) acquisition without adequate compensation.

[17] The point was submitted before the High Court. Paragraph 16 of the grounds of judgment demonstrated that the High Court did have in mind art 13 of the Federal Constitution. In the circumstances, this ground 5 is wholly unwarranted and without merit.

GROUND (6)

The learned judge and/or the assessors have erred in law and/or fact in failing to consider and decide that paras 2(d) and 2(e) the First Schedule of the Land Acquisition Act 1960 do not differentiate between a petrol station operator and a supplier of the petrol.

(a) The Land Acquisition Act 1960 provides that all persons having an interest on the land, which the appellant is one, shall be compensated.

[18] The specific submission that Land Acquisition Act 1960 does not differentiate between a petrol station operator and a supplier of the petrol was not made before the High Court. Nor was it made before this court. In our view, the issue is what is authorised by the Land Acquisition Act 1960 as compensation and that had been dealt with adequately.

GROUND (7)

The learned judge has erred in law and/or fact In failing to consider that the respondent has never challenged the evidence regarding the appellant's interest and loss of income (in terms of formula and quantum).

(a) following thereto, the learned judge had erred in law and/or in fact in failing to consider and decide that the appellant's loss is proven.

(b) following thereto, the learned judge has erred in law in failing to consider and decide that the appellant's losses can and should be compensated.

[19] This last ground seeks to argue that the fact the respondent had not challenged the evidence regarding the appellant's interest and loss of income (in terms of formula and quantum) and therefore should have taken that into consideration and decide that the appellant's loss is proven.

[20] In our view, given that the question of law is whether such 'loss' is recoverable, the paucity of the submission is obvious. We dismissed it at without merit.

CONCLUSION

[21] For the foregoing reasons, we dismissed the appeal, fixed costs in the sum of RM10,000 and ordered the deposit be refunded.

Appeal dismissed.

Reported by Ashok Kumar